United Nations S/2004/72

Security Council

Distr.: General
26 January 2004

Original: English

Letter dated 26 January 2004 from the President of the Security Council addressed to the Secretary-General

On 23 August 2002, you transmitted to the President of the Security Council a letter addressed to you by the then President of Burundi, Pierre Buyoya, requesting the establishment by the Security Council of an international judicial commission of inquiry as provided for in the Arusha Peace and Reconciliation Agreement for Burundi.

In conformity with the recommendations of their last mission to Central Africa (see S/2003/653), members of the Security Council have examined this request. They have agreed to request you to dispatch to Burundi an assessment mission by the Secretariat. The objective of the mission will be to consider the advisability and feasibility of establishing such a commission. The terms of reference of the mission, which were approved by the Council during its consultations held on 23 January, are contained in the annex to the present letter.

(*Signed*) Heraldo **Muñoz**
President of the Security Council

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Annex

[Original: French]

International judicial commission of inquiry for Burundi

Terms of reference of an assessment mission to Burundi by the Secretariat

1. The objective of the mission will be to consider the advisability and feasibility of establishing an international judicial commission of inquiry for Burundi, as requested by the President of Burundi, Pierre Buyoya, in his letter dated 24 July 2002 to the Secretary-General, who transmitted it to the members of the Security Council on 23 August 2002.

2. Upon completion of its work and bearing in mind the needs of the Burundian judicial system, the mission should specify in its report the modalities and options for the establishment of an international commission of inquiry, should the Security Council so decide. The assessment team should refer to the Arusha Peace and Reconciliation Agreement of 28 August 2000 with regard to the creation of such a commission, and consider approaches that will best support the creation in Burundi of a just and lasting peace based on democratic principles, fostering truth and reconciliation while achieving justice.

3. To this end, the mission may:

(a) With regard to capacities in Burundi:

- In the context of efforts to combat impunity, assess the progress made towards implementation of the judicial reforms provided for in the Arusha Agreement of 28 August 2000 and the capacity of the Burundian judicial system to bring criminals to trial in an impartial and effective manner, particularly its powers of investigation;

- Recommend structures within the framework of an international commission that would leave lasting positive benefits to the capacity of the Burundian judicial system in support of reforms provided for in the Arusha Agreement;

- Assess the progress made towards the establishment of a national truth and reconciliation commission (its composition, mandate, impact on Burundian society) and the implications of the law passed on 16 April 2003 by the National Assembly but awaiting Senate approval and Presidential signature, which provides for provisional immunity for political leaders returning from exile;

(b) With regard to the added value of an international commission of inquiry:

- Seek the advice of the governmental and judicial authorities of Burundi and other relevant bodies (Implementation Monitoring Committee of the Arusha Agreement, field office of the Office of the United Nations High Commissioner for Human Rights, Facilitator of the peace process, non-governmental organizations) on the usefulness of the existing reports of inquiries cited in the letter from President Buyoya to the Secretary-General — the 1985 Whittaker report, the 1994 report of non-governmental organizations, the 1994-1995 report of Ambassadors Siméon Aké and Martin Houslid, the

1996 report of the International Commission of Inquiry — and on their impact on the Burundian peace process;

Determine the possible division of competencies between the national truth and reconciliation commission and the international commission of inquiry, particularly with regard to their terms of reference, the nature of their powers, the term of their mandates, complementary investigatory responsibilities, the status of the individuals to be investigated, and the question of amnesty;

(c) With regard to the modalities proposed by the Burundian President in the event of the establishment of an international commission of inquiry:

Together with the Burundian authorities, examine the possibility of more effectively limiting the commission's temporal competence to specific events;

Assess the capacity of the Burundian Government to guarantee the security of the members of the commission and to facilitate their investigations (including access to witnesses);

Based on previous experiences, evaluate the logistical, human and financial resources that the establishment of such a commission would require from the United Nations;

Clearly state what the expectations of the Burundian authorities are regarding the legal implications of the conclusions of the report of the commission of inquiry (including trial by national courts or any international jurisdiction).

4. The mission would work in collaboration with the Special Representative of the Secretary-General and, where necessary, would have available to it the resources of the United Nations Office in Burundi and, as appropriate, of the African Mission in Burundi of the African Union. In addition to the governmental and judicial authorities of Burundi, it may consult with representatives of the legal profession, the Facilitator of the Burundian peace process, the staff of the field office of the Office of the High Commissioner for Human Rights in Burundi, the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Burundi, and non-governmental organizations.

5. The assessment mission shall enjoy the full cooperation of the Government of Burundi. It shall be provided with the necessary facilities to enable it to discharge its mandate and shall, in particular, be guaranteed:

(a) Freedom of movement throughout the territory of Burundi; free access to all places that have a bearing on the work of the mission, information and documentary material in possession of governmental and local authorities; and the freedom to meet and interview representatives of governmental and local authorities, political parties, rebel groups, community leaders, non-governmental organizations, private institutions and the media, and any such persons whose testimony is considered necessary for the fulfilment of its mandate;

(b) Appropriate security arrangements for the personnel of the mission;

(c) The necessary privileges and immunities under the 1946 Convention on the Privileges and Immunities of the United Nations.